LPA No. 110 of 2007

23.10.2007 Present: Mr. Ashok Sharma, counsel for the appellants.

Mr. V.D. Khidtta, counsel for the respondents.

CMP(M) No. 722 of 2007:

Heard learned counsel for the parties.

There is delay of 76 days in filing the appeal. The applicants/appellants have submitted that delay has occurred due to the administrative process in the appellant Nigam. It has also been submitted that after the judgment was sent to the higher authorities first a communication dated 16.7.2007 was received from the headquarters of the Corporation that extension of one month's time be requested from the Court for implementation of the orders. Thereafter, on 30.8.2007 another communication was received and it has been decided to file an appeal. Thereafter, the appeal has been filed on 13.9.2007. Keeping in view the aforesaid facts and circumstances of the case, we feel that there is sufficient cause to condone the delay, which is hereby condoned. The application stands disposed of.

LPA No. 110 of 2007:

The respondents who are the original writ petitioners had filed a writ petition in this Court praying for the following amongst other reliefs:

(i) That the retrenchment notices issued to the petitioners vide Annexure A-10 and A-11 and also similar notices issued to the

other petitioners on 16.8.2001, may kindly be quashed and set aside.

(ii) That the respondents may kindly b directed to re-engage the petitioners and grant temporary status with effect from the date they are eligible i.e. 15.4.1999 and regular status with effect from October, 2000, on which date, the junior persons have been given such benefits.

The matter came up for hearing before the learned Single Judge on 4.5.2007, when the following order was passed:

"Heard in part.

Mr. Madan Singh (DET) is present in the Court and assures this Court that on the basis of the pleadings of the parties, the Department is ready and willing to have a re-look into the matter and for that purpose he seeks 15 days' time. Time granted. Mr. Madan Singh may seek instructions within two weeks. The matter may come up for hearing on 22.5.2007."

Thereafter, the matter was taken up as ordered on 22.5.2007. Mr. Madan Singh aforesaid who is the Divisional Engineer filed an affidavit. In this affidavit it was stated that if the preceding year is taken as 1.8.1997 to 31.7.1998, then the petitioners were not eligible as they had not completed 240 days service in the preceding year. It was further stated that respondent No. 3 i.e. Deputy

General Manager(Telecom Project) Shimla had prepared a list of 29 Daily Rated Majdoors (DRMs) who were working in the Project. The names of the petitioners were included in this list. However, only 29 persons were granted temporary status of Majdoors and petitioners No.1,3 and 7 were not granted this status. The petitioners thereafter filed O.A. No. 598/HP/2000 before the learned Central Administrative Tribunal. The Tribunal disposed of this Original Application with the direction that the respondents should pass a speaking order on the representation of the petitioners. Thereafter, a Committee was constituted to check the eligibility of all the DRMs including those who had been granted temporary status. The Committee found that none of 29 persons recommended by respondent No. 3 aforesaid were eligible for grant of temporary status. Consequently, an enquiry was ordered into the matter and the case of the petitioners was rejected.

Thereafter the retrenchment orders, which were impugned in the writ petition, were passed. This was obviously done in consequence to the enquiry held and the speaking order passed. However, the petitioners had continued to work until their retrenchment. As per the averments made in the affidavit some other instructions were issued on 19.4.2001 for regularization of labour. Thereafter, the deponent i.e. the Divisional Engineer, (AHQ) Shimla had made a recommendation to the C.G.M. H.P.

Telecom Circle that 27 Majdoors working as DRMs be regularized. This included the petitioners. In the affidavit, Mr. Madan Singh has clearly stated that he is not authorized to granting regular status to the DRMs and he has only made recommendations in this behalf. According to the averments made in this affidavit, the question as to whether the petitioners were entitled to temporary or regular status or not was to be decided by the C.G.M. H.P. Telecom Circle and he alone could apprise the Court of the circumstances under which he had not granted regular status to the petitioners.

The learned Single Judge disposed of the writ petition by relying upon some of the averments made in the affidavit of Mr. Madan Singh and the documents attached thereto. The recommendations of Mr. Madan Singh obviously were not binding on the higher authority. He in his affidavit has clearly stated that C.G.M. H.P. Telecom Circle would be the appropriate person to give the reasons for rejecting the claim of the petitioners. We find that the learned Single Judge has virtually decided the matter on the affidavit of Mr. Madan Singh and the recommendations made by him. This could not have been done since the recommendations of Shri Madan Singh however only recommendatory in nature and the matter had to be decided by the higher authorities. The learned Single Judge has not gone into the merits of the dispute. He has not decided why the decision of the higher authorities was against law.

It would have been more appropriate, in view of the facts stated above, if before passing the final order, the learned Single Judge had called for the affidavit of the C.G.M. H.P. Telecom Circle. Without doing that, the earlier decision of a senior official rejecting the recommendations of a junior official could not have been set aside on the basis of the affidavit of the same junior officer. We are, therefore, of the opinion that the order of the learned Single Judge deserves to be set aside and the matter is remanded to the learned Single Judge for decision afresh. The appellants are directed to file an affidavit of the C.G.M. H.P. Telecom Circle or any authority higher than the C.G.M, H.P. Telecom Circle dealing with all the averments made in the writ petition as well as in the supplementary affidavit filed by Mr. Madan Singh within a period of six weeks from today. Thereafter, the learned Single Judge shall hear and decide the writ petition on merits.

CMP No. 805 of 2007:

In view of the orders passed in the main appeal, this application has become infructuous.

(Deepak Gupta),J.

October 23, 2007 **(V.K. Ahuja), J.**
(BSS)